IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

WP(C).No. 19579 of 2007(E)

PETITIONER:

P.N.KRISHNAKUMAR, S/O.NANU EZHUTHASSAN,
AGED 50 YEARS, RESIDING AT "USHUS",
HILL GARDENS, KUTTANALLUR, THRISSUR-680 014.

BY ADV. SRI.C.S.MANU
SRI.S.K.PREMRAJ
SRI.ANOOP JOSEPH
SRI.ANOOP.V.NAIR
SRI.GEORGE THOMAS (MEVADA)
SRI.P.R.VENKATESH

RESPONDENTS:

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1. INDIAN BANK, GURUVAYOOR BRANCH,
TRICHUR DISTRICT REPRESENTED BY ITS MANAGER.

2. RECOVERY OFFICER, RECOVERY SECTION OF
THE DEBTS RECOVERY TRIBUNAL (KERALA AND
LAKSHAWDEEP), 8TH FLOOR, KSHB BUILDINGS,
PANAMPILLY NAGAR, ERNAKULAM.

3. THE MANAGER, RESERVE BANK OF INDIA,
DEPARTMENT OF BANKING SUPERVISION,
THIRUVANANTHAPURAM. 695 033.

BY ADV. SRI.S.SREEKUMAR
BY ADV.SRI.JACOB VARGHESE – SC FOR RBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.19579/2007

PETITIONER's EXHIBITS:

EXT.P1 COPY OF THE RECOVERY CERTIFICATE NO.181 DTD 12.10.2000 ISSUED BY THE DEBTS RECOVERY TRIBUNAL (KERALA & lAKSHADWEEP), ERNAKULAM.

EXT.P2 COPY OF THE CIRCULAR BEARIANG NO.DBOD.BP.BC 65/21.4.117/02-03 DTD 29.1.03 ISSUED BY THE RBI.

EXT.P3 COPY OF THE LETTER DTD 28.2.03 SENT BY THE R1 TO THE PETITIONER.

EXT.P4 COPY OF THE APPLICATION FOR ONE TIME SETTLEMENT DTD 7.4.03 SUBMITTED BY THE PETITIONER TO R1.

EXT.P5 COPY OF THE SETTLEMENT OFFER DTD 13..5.03 ISSUED BY R1 TO THE PETITIONER.

EXT.P6 COPY OF THE DETAILED REPRESENTATION SUBMITTED BY THE PETITIONER DTD 6.8.05 TO R3.

EXT.P7 COPY OF THE LAWYERS NOTICE ISSUED ON 8.10.05.

EXT.P8 COPY OF THE REPLY RECEIVED FROM THE R3 DTD 21.11.05.

EXT.P9 COPY OF LETTER SENT BY PETITINER TO THE RBI DTD 10.2.2007.

EXT.P10 COPY OF THE LETTER DTD 19.3.07 SENT BY R1.

EXT.P11 COOPY OF THE SALE PROCLAMATION PUBLISHED IN MATHRUBHUMI DTD 19.3.07.

EXT.P12 COPY OF THE REPRESENTATION DTD 18.6.07.

EXT.P13 COPY OF THE LETTER DTD 19.6.07 REJECTING THE REQUEST OF THE PETITIONER.

EXT.P14 COPY OF THE LEDGER EXTRACT

RESPONDENTS' EXHIBITS:

EXT.R1(a) COPY OF THE PROCEEDINGS DTD 10.12.2004.

EXT.R1(b) COPY OF THE JUDGMENT DTD 11.7.05 IN WPC.36060/04

EXT.R1(c) COPY OF THE ORDER DTD 27.7.06 IN IA.1095/06 IN OA.1554/98 BEFORE THE DEBT RECOVERY TRIBUNAL, ERNAKULAM.

/TRUE COPY/

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ANTONY DOMINIC, J.

W.P.(C)NO.19579 OF 2007 -E

Dated this the 12th day of September, 2007.

JUDGMENT

The prayer in this writ petition is to direct the 1st respondent to permit the petitioner to settle the liability by remitting the exact amount in accordance with Ext.P2, the revised guidelines for compromise settlement of chronic non-performing assets of Public Sector Banks, which was announced by the R.B.I. The petitioner also contends that at least he should be given the benefit of Ext.P5, the one time settlement, offered by the 1st respondent Bank.

2. In so far as the first claim of the writ petitioner is concerned, the 1st respondent Bank contends that Ext.P2 guidelines are inapplicable to the petitioner. Clause 3(A)(i) of Ext.P2 deals with coverage of the scheme and the Bank contends that only these cases which are pending before the DRT in which consent decree has been passed, are covered by Ext.P2. According to the Bank, in so far as the petitioner's case is concerned, a decree was passed by the D.R.T in a contested proceedings as early as on 12.10.2000 whereas, Ext.P2 was announced only on 29.1.2003. Therefore, in the absence of

consent decree, the Bank contends that, Ext.P2 is not applicable to the petitioner.

3. In support of this contention, the learned counsel for the Bank made reference to the decision of the Supreme Court in **X-Calibre Knives (P) Ltd. v. State Bank of India** (2005 (10) SCC 265). From paragraph-10 of the judgment of the Apex Court, it is evident that subsequent to Ext.P2, the Reserve Bank had issued a communication dated 7.10.2003 clarifying that Ext.P2 guidelines were not applicable to cases where decrees/necessary orders have already been passed by the Tribunal. In view of the clarification dated 7.10.2003 referred to by the Apex Court, since decree has already been passed by the D.R.T in the petitioner's case, I hold that Ext.P2 is inapplicable to the petitioner. Therefore, the prayer for the benefit of Ext.P2 raised by the petitioner cannot be granted.

4. In so far as the further prayer of the petitioner for the benefit of Ext.P5 one time settlement offered by the bank is concerened, the learned counsel for the 1st respondent Bank contends that the petitioner did not avail that benefit. As a result of this, the Bank had by its order dated 10.12.2004 rejected the request for one

time settlement and that order has not been challenged by the petitioner. In view of the order so passed by the Bank on 10.12.2004, the benefit of Ext.P5 is also not available to the petitioner. Thus, the 2nd prayer sought for by the petitioner also cannot be granted in this proceedings.

5. However, the learned counsel for the writ petitioner prays that his client be permitted to apply for setting aside the sale which took place on 26.07.2007. The petitioner may do so, in which case, it is for the Tribunal to pass orders thereon in accordance with law.

The writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE.

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